



Public Employees for Environmental Responsibility

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Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER), requests information from the U.S. Environmental Protection Agency regarding a proposal to expand the Emergency Planning and Community Right-to-Know Act's Toxic Release Inventory reporting requirements.

Background

In May 2011, EPA's Monthly Action Initiation List proposed a rule entitled "Expansion of Industry Sectors Covered by the Toxics Release Inventory (TRI), Emergency Planning and Community Right-to-Know Act (EPCRA) section 313. This proposal (RIN 2025-AA33) would have required seven additional industrial sectors to report pollutants to the EPA's Toxics Release Inventory. The Action Initiation List published the following month, June 2011, did not refer to it. The rule was sporadically mentioned in a few other EPA publications through 2015, but was never finalized.

Requests

PEER requests the following documentation related to the "Expansion of Industry Sectors" rule (RIN 2025-AA33):

- 1) The Charter and/or membership list(s) of this Rule's Workgroup, as described on Page 28 of *EPA's Action Development Process: Guidance for EPA Staff on Developing Quality Actions* (attached).
- 2) Any Early Guidance instructions and/or meeting memoranda as described in Pages 34-36 of *EPA's Action Development Process*.
- 3) Any and all Analytic Blueprints prepared for this rule, as described on Page 33 of *EPA's Action Development Process*.
- 4) Any and all communications between members of the Rule's workgroup and stakeholders.
- 5) All contents of the package that the workgroup prepared for final agency review (described in Pages 41-43 of *EPA's Action Development Process*).

- 6) The memorandum recording the Final Agency Review meeting (see p. 44 of *EPA's Action Development Process*).

Custodians for these records should include the following persons and databases:

1. Gilbert Mears, Office of Environmental Information, Environmental Protection Agency
2. Cory Wagner, Office of Environmental Information, Environmental Protection Agency.
3. EPA's ADP Library
4. Rule and Policy Information and Development System (RAPIDS)

Responsive records should include:

1. Electronic messages (including email, texts, chats, and instant messaging via Google, iMessage, WhatsApp, Facebook, Slack, Microsoft Teams, Skype, and any similar services) stored on any desktop, laptop, tablet, server, commercial document sharing service (Microsoft Teams or OneDrive)
2. Any and all attachments or linked materials if they are in the agency's possession or control.

For electronic records, please provide all records in their native file formats (i.e. not converted to PDF) with all metadata included, and for records such as emails which have files embedded or attached, please provide all attachments in their native formats. For instant messages, plain text is acceptable consistent with guidance issued by the National Archives and Records Administration.¹

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of *Vaughn v. Rosen* (484 F.2d 820 [D.C. Cir. 1973] *cert. denied*, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

Fee Waiver Request

PEER requests that all fees be waived because "disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor" (5 U.S.C. 552 (a) (4)(A)). Disclosure of these records is in the public interest for the following reasons:

1. *The records concern the operations or activities of the Government.*

The FOIA request is, by its terms, limited to identifiable activities of U.S. Environmental Protection Agency employees with regards to proposed rule 2025-AA33, and thus concerns operations or activities of the Government.

2. *The disclosure of the requested records is likely to contribute to public understanding of these operations or activities.*

If the public sees the requested documents and communications, they will be better able to understand why the U.S. Environmental Protection Agency did not follow through on its May 2011 proposal to expand Toxic Release Inventory reporting requirements. As such, it captures the material which best enhances public understanding of the merits of the issue.

3. The release of these requested records will contribute significantly to public understanding of the governmental activities.

The nature of the information should allow the public to understand why the U.S. Environmental Protection Agency did not increase the number and types of entities required to submit air pollution data to the Toxics Release Inventory. A broad segment of the population is interested in air pollution and how it affects the neighbors of industrial facilities. Thus the records will be of interest to a broad portion of the public and are likely to improve their understanding of the governmental activities at issue.

PEER intends to provide the requested information to members of Congress and its relevant committees. We also intend to disseminate it to the general public through —

- Release to the news media;
- Posting on the PEER web page which draws between 1,000 and 10,000 viewers per day; and
- Publication in the PEER newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

Through these methods, PEER generates an average of 1.5 mainstream news articles per day. Moreover, extensive media coverage of USGS' actions relative to this species underlines the broad public interest in this material.

4. Disclosure would not serve a commercial interest of the requestor.

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue code.

If you have any questions about this FOIA request, please contact me at (202) 265-PEER. I look forward to receiving the agencies final response within 20 working days.

Cordially,

A handwritten signature in black ink, appearing to read "Peter B. B.", with a long horizontal flourish extending to the right.

Kevin Bell, Staff Attorney

Public Employees for Environmental Responsibility